

(c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(7) If no objection is received within 60 days from the date the petition for expungement ~~[was]~~ is filed with the court, the expungement may be granted without a hearing.

(8) The court shall issue an order of expungement if ~~[it]~~ the court finds by clear and convincing evidence that:

(a) the petition and certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

(c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecutor ~~§~~→ **provided written consent and** ~~←§~~ has not filed and does not intend to refile related charges;

~~[(c)]~~ (d) if the petitioner seeks expungement of drug possession offenses allowed under Subsection ~~77-40-105~~(6), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction; and

~~[(d)]~~ (e) it is not contrary to the interests of the public to grant the expungement.

(9) If the court denies a petition described in Subsection (8)(c) because the prosecutor intends to refile charges, the person seeking expungement may again apply for a certificate of eligibility if charges are not refiled within 180 days of the day on which the court denies the petition.

~~[(9)]~~ (10) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section ~~77-40-104~~ or ~~77-40-105~~.

Legislative Review Note
Office of Legislative Research and General Counsel